

Before the
Federal Communications Commission
Washington, D.C. 20554

In re)
)
Family Broadcasting, Inc.)
)
Order to Show Cause Why the Licenses for)
Stations WSTX(AM) and WSTX-FM,)
Christiansted, U.S. Virgin Islands,)
Should Not Be Revoked)

EB Docket No. 01-39

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

To: The Commission

ENFORCEMENT BUREAU'S OPPOSITION TO MOTION TO STRIKE

1. On October 3, 2001, Family Broadcasting, Inc. ("Family") filed a pleading styled "Motion to Strike" ("Motion"). Family seeks to strike those portions of the Enforcement Bureau's Reply Brief to Exceptions, which suggest that Barbara James-Petersen "was somehow involved in any of the wrongdoing at Stations WSTX AM and FM." Motion at 1. Pursuant to section 1.294 of the Commission's rules, the Bureau opposes Family's Motion.

2. Family objects to the Bureau's arguments, which countered Family's claims in its Exceptions that Ms. James-Petersen had no part in the wrongdoing at the stations. In so objecting, Family argues that the *Summary Decision of Administrative Law Judge Richard L. Sippel*, FCC 01D-02, released August 7, 2001 ("*Summary Decision*"), found Ms. James-Petersen entirely blameless. Family concludes that the Bureau should have filed its own exceptions if it found fault with the findings of fact appearing in the *Summary Decision*. See Motion at 2.

3. Family is mistaken, and the Commission should summarily deny the Motion. The *Summary Decision* finds repeatedly that Ms. James-Petersen had a role in various aspects of Family's rule violations. See *Summary Decision* at ¶¶ 14 m and n; 18 j-q; 20 k-n; and 22 c-d. As those findings reflect, Ms. James-Petersen was general manager during at least two inspections,

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both of which revealed serious rule violations. Moreover, she received Commission correspondence, to which Family ultimately failed to respond. In light of that record, the *Summary Decision* correctly concludes at ¶ 42:

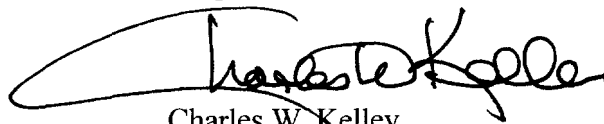
“[S]ubstantial evidence shows that under Luz James’ control, which included a period of time when Ms. James-Petersen was station manager, there were willful violations that justify the remedy of revocation. Her past performance does not instill a confidence that she can bring the stations into full compliance in the future. Family has failed in its proof to show by reliable evidence that the proposed familial assignees would guarantee future compliance. Luz James, and all others associated with the operations of the Family stations, including Barbara James-Petersen and Asta James, knew from the designated renewal proceeding in 1997, and the subsequent Notices of Violations incident to on-site inspections, that there was a probability of revocation if corrective action was not taken, particularly if Family was less than candid in its dealings with the Commission. Family ignored the warnings and chose to violate the law. Why should the future be any different? There are presented no reasonable probabilities of future compliance that can alter the historical merits of this case.”

In light of the foregoing, it defies understanding how Family could claim that: “The ALJ, however, never suggested that Barbara James-Petersen was, herself, complicit in any of the wrongdoing at either Station WSTX or WSTX-FM.” Motion at 2. As detailed above, the *Summary Decision* does indeed find fault with Ms. James-Petersen. The Bureau’s Reply Brief does nothing more than provide further support for the correct conclusions that appear in the *Summary Decision*.

4. Moreover, the *Summary Decision* also correctly concludes that the children of Gerald Luz A. James, the principal wrongdoer, and Asta James, the purported future financier of the stations, will not be independent of their parents. *See Summary Decision* at ¶¶ 40-41. This lack of independence, combined with Ms. James-Petersen’s own shortcomings, is fatal to any legal theory advanced by Family to allow it to continue as licensee under the ownership of Ms. James-Petersen and her brothers. The *Summary Decision* at ¶ 42 and 46 correctly reaches this conclusion, and the Bureau’s Reply Brief merely reinforces it.

5. In sum, it is readily apparent that the Commission has no reason for striking any portion of the Bureau's Reply Brief, which does nothing more than refute the erroneous claims advanced by Family. Family's Motion is baseless and should be denied.¹ Further, as argued in the Bureau's Reply Brief, the *Summary Decision* correctly concludes that revocation of Family's licenses is the only appropriate remedy.

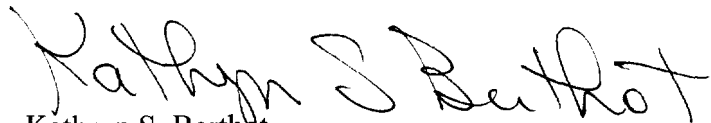
Respectfully submitted,



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¹ The Bureau notes that Family's Motion goes far beyond its stated purpose, namely, striking portions of the Bureau's Reply Brief with which it finds fault. Specifically, the Motion recites and seeks to rely on deposition testimony of Ms. James-Petersen, which is not referenced anywhere in its own Exceptions. *See* Motion at 3-8. It thus appears that Family is improperly seeking to introduce through its Motion what it failed to argue in its Exceptions. Suffice it to say that such an end run around the rules should not be countenanced.

CERTIFICATE OF SERVICE

Karen Richardson, secretary of the Enforcement Bureau's Investigations and Hearings Division, certifies that she has on this 12th day of October, 2001, sent by first class mail, copies of the foregoing "Enforcement Bureau's Opposition to Motion to Strike" to:

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